IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 18 of 1985

with
INCOME TAX REFERENCE NO. 42 OF 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

G R EMPLOYEES WELFARE TRUST

Appearance:
MR MANISH R BHATT for Petitioner IN BOTH REFERENCES
MR RK PATEL for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 12/09/2000

ORAL JUDGEMENT

Per Dave,J:-

Looking to the fact that a common question of law has been referred to us at the instance of the revenue in both the References, at the request of the learned advocates,both the References are being decided by this common judgment.

At the instance of the revenue, the following questions of law have been referred to us under the provisions of section 256(1) of the Income tax Act,1961 (hereinafter referred to as `the Act'):

Reference No.18/85

"Whether on the facts and in the circumstances of the case. the provisions of section 164 of the Income tax Act,1961 could be invoked for taxing the assessee trust at the flat rate of 65%?"

Reference No.42/85

"Whether on the fact and in the circumstances of the case, the income of the assessee trust was assessable to tax at the appropriate rate applicable to the association of persons and not at flat rate of 65%% for the assessment year ?"

The facts which are not disputed in these References are as under :

The assessee trust is a discretionary trust. Beneficiaries of the said trust are employees and family members of the employees of the settlor of the trust. It is not in dispute that the beneficiaries of the trust are not having any taxable income.

A question arose for assessment years 1978-79 and 1979-80 as to whether the assessee had to pay tax at the flat rate of 65% or at the appropriate rate as per the first proviso to section 164 (1) of the Act as an association of persons.

The assessing officer had assessed the assessee and had raised a demand at the rate of 65% . Being aggrieved by the order of assessment, the assessee had filed appeals before the AAC who held that the ITO was not justified in applying the rate of 65%.

Being aggrieved by the order passed by the AAC, the revenue went in appeal before the Tribunal. The Tribunal ultimately decided that the assessee would get the benefit of the first proviso to section 164 (1) and in that event, instead of charging tax at 65%, the assessee should be charged tax at the appropriate rate leviable on the association of persons.

In the circumstances stated above, the revenue has filed the present References.

It has been submitted by the learned advocates appearing for the parties that the questions raised have been squarely covered by the judgment delivered by this court in CIT vs. Daljitsinhji Trust, 204 ITR 135.

It has been submitted by the learned advocates that as per the ratio of the judgment referred to above, if none of the beneficiaries of the assessee trust is having income chargeable to tax under the Act, the assessee trust has not to pay tax at the higher rate of 65%, but has to pay tax at the appropriate rate which is to be paid by an association of persons.

Looking to the law laid down by this court, it is clear that Assessing Officer had committed an error by levying tax at the rate of 65%. The Tribunal was absolutely justified in observing that as no beneficiary of the assessee trust was having any income chargeable to tax,the assessee trust should be given benefit of the first proviso to section 165 (1) of the Act.

In the circumstances, while following the judgment referred to above, we decide the questions referred to us in favour of the assessee and against the revenue.

References accordingly stand disposed of with no order as to costs.

(D. M.Dharmadhikari,C.J.)

(A. R. Dave, J.)

parekh